IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

CRL.A.No. 1163 of 2002()

SC.45/1999 of ADDL. SESSIONS COURT (ADHOC), KALPETTA

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APPELLANT: ACCUSED:

LUCKA @ LUCKOSE, S/O. KURUVILLA,
PAYYAMPILLI, THAVINJAL, MANANTHAVADY,
WAYANADU DIST.

BY ADV. SRI.LALJI P.THOMAS

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY THE DIRECTOR OF PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CRL.M.P.NOS.8953/2002 & 1659/2003 IN CRL.A.NO.1163/2002

DISMISSED.

SD/- K.R.UDAYABHANU, JUDGE

30/10/2007

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K.R.UDAYABHANU, J.

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Crl.A.No.1163 of 2002(C)

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Dated this the 30th day of October, 2007

J U D G M E N T

The appellant is the accused in S.C.No.45/1999 who stands convicted for the offence under Section 326 I.P.C and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/- and in default to undergo simple imprisonment for three months.

2. The prosecution case is that on 30/06/1997 at about 11 a.m the accused trespassed into the paddy field of PW.1 and inflicted injuries on PW.2 with a chopper.

3. The counsel for the appellant has only sought for modification of sentence. It is submitted that the injuries sustained are not serious enough and that the parties are neighbours and that the incident was the result of a sudden provocation and now 10 years have lapsed since the commencement of the proceedings and so far the accused was

facing the criminal proceedings and living under the shadow of impending imprisonment. It is also submitted that the accused is too poor and his entire family is depending on his earnings for their livelihood.

4. I find that as per Ext.P5 discharge certificate PW.2 was an inpatient in the Medical College Hospital for eight days, and it is noted that there is fracture of medial epicondyle on the right humerus. In the circumstances I find that the sentence is to be modified. Conviction is confirmed and the sentence is modified to imprisonment till the rising of the court and to pay a fine of twenty thousand and in default to undergo simple imprisonment for ten months. The fine amount, if realised, shall be paid to PW.2. The appellant is granted three months time to remit the fine amount. He shall appear before the Additional Sessions Judge, (Ad hoc), Kalpetta, on 30/01/2008 to receive the sentence.

K.R.UDAYABHANU,
Judge

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